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REPORT
No. 97-538

THE SALLIE MAE TECHNICAL AMENDMENTS ACT OF 1982

SEPTEMBER 9 (legislative day, SEPTEMBER 8), 1982.—Ordered to be printed

Mr. STAFFORD, from the Committee on Labor and Human Resources, submitted the following

REPORT

[To accompany S. 2852]

The Committee on Labor and Human Resources, to which was referred the bill (S. 2852) to amend section 439 of the Higher Education Act of 1965 to make a technical amendment relating to priority of indebtedness, and for other purposes, having considered the same, reports favorably thereon, with technical and conforming amendments, and recommends that the bill as amended do pass.

The amendment to the text of the bill strikes all after the enacting clause of the bill and inserts a new text which appears in italic type in the reported bill.

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I. HISTORY OF THE LEGISLATION

S. 2852 was introduced as an emergency, technical measure on August 18, 1982 by Senators Hatch, Stafford, Pell, and Randolph, and was ordered reported on September 8, 1982 by the full Labor and Human Resources Committee with technical and conforming changes. Prior to the introduction of the legislation, the Subcommittee on Education, Arts and Humanities held a hearing, on August 12, 1982, to consider the matter of extending a waiver of Federal credit priority in the event of an involuntary liquidation or reorganization by the

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Student Loan Marketing Association (Sallie Mae) under the Bankruptcy Act. S. 2852 is a result of the Subcommittee's findings with respect to the bankruptcy waiver issue.

II. BACKGROUND AND COMMITTEE VIEWS

A. Sallie Mae

The Student Loan Marketing Association (Sallie Mae), a private, government-sponsored corporation with current assets of over $6 billion, was established by Congress in the Education Amendments of 1972, Public Law 92–318, to serve as a secondary market for the warehousing and purchasing of Guaranteed Student Loans. Sallie Mae received no Federal appropriation to commence its secondary market operations, but rather began financing its operations by selling stock to eligible purchasers and by borrowing in the private capital markets.

Beginning in 1974, Sallie Mae obtained funds primarily through borrowing from the Federal Financing Bank (FFB), an off-budget borrowing facility of the Treasury. Sallie Mae's access to FFB financing was part of an attempt by the Treasury to provide generally for a more orderly entry into the capital markets for government-sponsored private corporations such as Sallie Mae. The corporation's obligations to the FFB were guaranteed by the Secretary of Education (and formerly the Secretary of HEW) and were issued with the approval of the Secretary of the Treasury.

The Education Amendments of 1980, Public Law 96–374, extended, from 1982 to 1984, the authority of the Secretary of Education to guarantee Sallie Mae's debt obligations, in recognition of anticipated significant expansion of the secondary market due to increased demand for and availability of student loans.

However, on March 1, 1981, as part of a general Administration policy of limiting FFB borrowing by government-sponsored private corporations, the Treasury and Sallie Mae entered into an agreement to discontinue the corporation's further FFB borrowing. Under the agreement, Sallie Mae was to discontinue borrowing by September 30, 1982, or at the time Sallie Mae's total FFB debt reached $5 billion. This $5 billion total was reached in January, 1982.

Without FFB borrowing authority, Sallie Mae now seeks funding for its operations through the public capital markets.

In the Older Americans Act Amendments of 1981, Public Law 97–115, Congress provided that, through September 30, 1982, the Federal government would have an equal claim with other creditors in the event of a Sallie Mae bankruptcy. Prior to the enactment of Public Law 97–115, the Federal government had first priority access to Sallie Mae's assets if Sallie Mae were to enter into an involuntary liquidation or reorganization under the Bankruptcy Act.

In adopting the temporary waiver in Public Law 97–115, Congress believed that, due to Sallie Mae's extensive FFB borrowings, this Federal priority would severely restrict Sallie Mae's ability to borrow in the public capital markets, as this priority would effectively encumber the holdings of potential Sallie Mae investors in the event of bankruptcy. In granting the waiver to Sallie Mae, Congress understood the uniqueness of Sallie Mae's position as the first entity to be weaned from the FFB. The temporary nature of the waiver granted

in Public Law 97–115 was intended to give this Committee and the Congress the opportunity to review Sallie Mae's financing and operations.

The Committee believes that an extension of the Federal priority waiver is both warranted and necessary if Sallie Mae is to be able to continue to provide liquidity to lenders to make student loans available, and so that the financing plans of both students and lenders are not severely disrupted. Nevertheless, a number of serious concerns about aspects of Sallie Mae's operations have been brought to the Committee's attention. Therefore, S. 2852 provides for a two-year, rather than permanent, extension of this waiver. The Committee believes that this extension must be acted upon expeditiously to avoid disruption of the student loan secondary market in which Sallie Mae is the principal actor.

In light of the above-mentioned concerns, the Committee is simultaneously requesting the General Accounting Office to conduct an extensive review of Sallie Mae's legislative authority and its program operations, as well as a more narrow, interim study to address specific and immediate concerns raised in the Education Subcommittee hearing held on August 12 and questions raised in conjunction with the expansion of state loan guarantee agency authority in this bill. The Committee hopes that this report will advise it as to possible modifications to the existing loan consolidation authority of Sallie Mae, and conforming amendments which would apply to loan consolidation authority being granted to state guarantee agencies.

The Committee will ask the GAO to report back to the Committee within six months on the following specific issues:

(1) The need for legislative change in the current authority under which Sallie Mae consolidates loans, specifically addressing whether or not Sallie Mae has the capability, when consolidating loans, to average varying interest rates of such consolidated loans which may include NDSL loans carrying interest rates of three percent to five percent;

(2) The capability of state loan guarantee agencies to consolidate student loans, and the capability of state agencies to average varying interest rates of such loans, which may include NDSL loans carrying interest rates of three percent or five percent;

(3) The potential savings to the federal government realized by expansion of loan consolidation authority to state guarantee agencies, in view of the provisions of Section 438(b)(2)(D)(i) of the Higher Education Act which establish a special allowance differential;

(4) The difficulties for state guarantee agencies which have arisen or could arise because of Sallie Mae's authority under Section 439(d)(1)(A) to set exclusively the terms and conditions under which the Association may purchase, repurchase, service, sell or resell, offer participation, or pooled interests or otherwise deal in student loans, any compelling reasons for such exclusive authority to be given to the Association, and whether or not such authority should be amended to give state agencies, institutions, organizations or lenders equal standing in setting terms, as is provided in Section 439(o)(1)(B);

(5) The effect of the amendment contained in the Omnibus Budget Reconciliation Act of 1981 which changed Sallie Mae's authority to make direct loans in areas where the Department of Education, in consultation with and agreement of the state agency, determined that loan demand was not being met by commercial lenders, to authority for Sallie Mae to insure Guaranteed Student Loans in states where the Department determines that loan demand is not being met by the established state agency. Specifically, the Committee is concerned whether, under present law and current operating policy, Sallie Mae has the capacity to so limit state agency loan activities as to reduce the ability of a state agency to meet effectively loan demand in that state; and

(6) The need for a minimum aggregate loan size under the consolidation provisions, as they apply to Sallie Mae and state guarantee agencies, and if so, what limits are appropriate.

Based on the information contained in this interim report from the GAO, the Committee fully intends to make statutory changes in Sallie Mae's existing authority and the expansion of loan consolidation authority to the state agencies, if appropriate and necessary to facilitate students' needs under the loan program.

With respect to the previously mentioned, more extensive GAO report on Sallie Mae, the Committee is requesting that the report be completed and submitted to the Committee by December 31, 1983. That report shall focus on the evolution of Sallie Mae, from the original authority under which it was established, through the most recent amendments contained in the Omnibus Budget Reconciliation Act. The Committee is particularly interested in an analysis of whether Sallie Mae's original purpose, to provide additional capital for student loans from the private sector, has, through legislative changes or policy redirection, been significantly eroded or altered, and whether or not Sallie Mae has lessened its commitment to act as a secondary market in favor of its ability to serve as a direct lender or guarantor.

B. Loan consolidation and extended repayment

In the Education Amendments of 1980, Sallie Mae was given exclusive authority to develop and implement a program of loan consolidation and extended repayment for borrowers with high student loan indebtedness or with multiple payments to different lenders. Testimony to the Committee from State loan guarantee agencies indicates that although Sallie Mae has exclusive authority to make consolidation loans, it does not have the exclusive capacity to do so. Representatives of the State guarantee agencies have informed the Committee that their agencies could consolidate various types of loans on a student's behalf without the minimum indebtedness requirement for consolidation loans currently in law. The Committee believes that granting this authority to the State loan guarantee agencies might substantially benefit students by affording them a choice of terms of consolidation.

The Committee also expects that any program of loan consolidation offered under this section will be subject to the review and approval of the Secretary of Education in order to promote uniformity and fairness of the terms and conditions of such program for all students electing to consolidate their loans. In making loans pursuant to this section,

a State agency or nonprofit private institution or organization should include eligible loans of a borrower irrespective of origin of such loans.

C. Needs analysis provisions

S. 2852 also contains certain provisions relating to needs analysis for the Federal student aid programs. These areas have been addressed in the past on an annual or even more frequent basis in appropriations legislation, and it is the conclusion of this Committee and of members of the Appropriations Committee that such matters are more properly addressed in the authorization process.

S. 2852 modifies the Higher Education Act to include the following provisions of the fiscal year 1982 Continuing Resolution on Appropriations, Public Law 97–161 (updated, where appropriate, for the most recent data):

a. Carrying over, for the 1983–84 academic year, the maximum Pell Grant for the 1982–83 academic year ($1,800);

b. Permanently severing the needs analysis systems for Pell Grants and the campus-based student aid programs;

c. Carrying over, for the 1983–84 and 1984–85 academic years, the cost-of-attendance criteria in effect for 1982–83;

d. Updating annually the family size offset for Pell Grants;

e. Providing in the event of reduced appropriations for the campus-based programs, for a ratable reduction in state allotments;

f. Providing that the Family Contribution Schedule for Pell Grants for the 1982–83 academic year, adjusted, shall be the Schedule for the 1983–84 academic year.

The Committee is especially concerned that the latter provision be expenditiously adopted. Successive Administrations have failed to comply with the law in punctually submitting to Congress a Family Contribution Schedule for the Pell Grant program. Most recently, the Family Contribution Schedule for the 1983–84 academic year—which the Higher Education Act requires to be submitted to Congress by April 1, was not submitted until August 2, a delay of more than four months. This delay has resulted in serious disruption and uncertainty for families attempting to plan the financing of higher education for their children.

The Committee believes that it is therefore necessary to fix the terms and conditions of the Family Contribution Schedule for Pell Grants and the Guaranteed Student Loan program for the 1983–84 academic year, in order to mitigate the current disruption in planning and to prevent additional problems for students and their families. Moreover, because of the annual failure to adhere to the submission date prescribed in statute, S. 2852 provides that, if the Department of Education again fails to submit a Family Contribution Schedule for Pell Grants in a timely and lawful manner—that is, by March 1 of 1983 for the 1984–85 academic year—the previous year's schedule, updated, will automatically carry over. This procedure will provide a "fail-safe" mechanism so that the late submission of a schedule would not materially affect, as it has in the recent past, the ability of students to participate in the Pell Grant program. This procedure will, the Committee hopes, remove the pall of uncertainty over Pell Grant eligibility and will assist student aid officers and

high school guidance counselors in advising, in a timely and informed manner, students about the availability of Federal student aid.

Finally, S. 2852 provides, for state allotments for these programs to be ratably reduced, should annual appropriations for the campus-based student aid programs decrease. However, the Committee in no way wishes to suggest reductions in these important need-based programs at this time.

D. Other provisions

There is currently before the Senate legislation which would waive the disclosure provisions of the Truth-in-Lending Act for the student loan programs under Title IV of the Higher Education Act. Although the Committee believes that certain of the requirements of the Truth-in-Lending Act, such as the disclosure of the annual percentage rate of interest, are superfluous and unnecessary in the Guaranteed Student Loan program, and result in burdensome paperwork for lenders, it also believes that lenders in these programs have a responsibility to make available to student borrowers useful, complete, and comprehensible information which will help students make informed credit decisions and budget plans. Such information should be disclosed not at the time each loan agreement is entered into between the student borrower and lender, but also prior to repayment.

Therefore, S. 2852 provides for simple disclosure to borrowers of the costs and terms of repayment of their loans prior to the commencement of repayment. The Committee intends that the agreement specified in the new subsection (b) of Section 433A of the Higher Education Act be considered as part of the agreement between eligible lenders and the Secretary of Education already specified under subsection (a). No separate agreement is necessary.

The Committee further intends that this new repayment disclosure should be effective only for those loans made subsequent to the enactment of the new Section 433A(b), and should not be retroactive.

S. 2852 also directs the National Center for Education Statistics to continue its annual survey of student charges as part of the Higher Education General Information Survey (HEGIS) through academic year 1985–86 and to perform a separate one-time survey of this data for academic year 1982–83. The Committee believes that it is critical that the federal government track the rise in tuition, fees, and room and board expenses, in light of inflation and the financial problems of states, institutions, families and students to assess whether there are adequate resources to make higher education available to financially needy students. The Committee needs this information to assist in gauging the effects of federal student assistance reductions in order to guide further policy decisions.

Finally, the Committee is concerned with the possibility that the current reduction schedule in the case of less-than-full funding of the Pell Grant program may result in inequities in Pell Grant awards to students with similar need characteristics. Therefore, S. 2852 provides for a linear reduction schedule, which scales down each full funding award based on its position on a straight line, so that as family income increases, the student will receive a smaller percentage of his or her entitlement. This linear reduction will eliminate the inequities which have existed under the current law "step-reduction" formula, and will

reduce awards in strict accordance with a student's financial needs. Again, the Committee, with this change, does not recommend less-than-full funding in the Pell Grant program at this time.

III. COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., September 8, 1982.

Hon. ORRIN G. HATCH,
Chairman, Committee on Labor and Human Resources, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has examined the cost impact for S. 2852, the Sallie Mae Technical Amendments Act of 1982, as ordered reported from the Senate Labor and Human Resources Committee, September 8, 1982.

Based on our analysis, passage on this bill would not increase federal costs. S. 2852 makes several amendments of a technical nature to the Pell grants program, guaranteed student loan (GSL) program, and other campus-based grant programs.

This bill establishes in law a separate Pell Grant family contribution schedule for the academic year 1983–1984 based on the same criteria in effect for academic year 1982–1983, allowing for a 7.3 percent increase in family size offsets and modifications for recent data. The Pell Grant family contribution schedule for academic year 1984–1985 would be established by the Secretary of Education as long as it is published in the Federal Register by April 1, 1983 and passes a prescribed review process. Otherwise, the schedule would be the 1983–1984 schedule modified for inflation and recent data. In addition, the current maximum grant level of $1,800 would be extended for the next two years. These provisions basically affect the timing and distribution of the grant but do not affect existing authorization levels and are still subject to appropriation action.

S. 2852 modifies the GSL program by extending for two years the existing priority in bankruptcy waivers for Sallie Mae, by providing for simplified disclosure to borrowers of the cost and terms of the loan, by allowing state agencies and eligible institutions to consolidate loans, and by extending the current family contribution guidelines. Estimates of current GSL program costs assume extension of the current family contribution guidelines and thus S. 2852 would not affect estimated program costs. All other GSL provisions are not expected to have any direct effect on federal costs.

This bill also includes provisions for the allocation of appropriations of other campus based aid. These do not change current authorization levels and the actual funding level is subject to appropriation action.

Should the Committee so desire, we would be pleased to provide further details.

Sincerely,

RAYMOND C. SCHEPPACH
(For Alice M. Rivlin, Director).

IV. VOTES IN COMMITTTEE

Pursuant to Section 133(b) of the Legislative Reorganization Act of 1946, the following is a tabulation of votes cast in the Labor and Human Resources Committee on S. 2852.

The vote on reporting the bill to the full Senate was as follows:

AYES	NAYS	ABSTAIN
Stafford	Humphrey	Nickles
Quayle		
Hawkins		
Weicker		
Denton		
East		
Kennedy		
Randolph		
Pell		
Eagleton		
Riegle		
Metzenbaum		
Matsunaga		
Hatch		

By a vote of 14 yeas, 1 nay, and 1 abstention, the bill was favorably reported to the Senate.

V. REGULATORY IMPACT STATEMENT

In accordance with paragraph 5(a) of Rule XXIX of the Standing Rules of the Senate concerning the regulatory impact of proposed legislation, the Committee provided the following evaluation of the anticipated additional paperwork and other regulatory impact that would result from the implementation of S. 2852.

A. Estimated number of individuals and businesses regulated and their group or classification: No new classification of individuals or businesses would become subject to regulation under S. 2852

B. Economic Impact on Individuals or Businesses: S. 2852 will have no additional impact on individuals or businesses

C. Impact of the act on personal privacy: S. 2852 has no impact on personal privacy

D. Additional paperwork, time and costs: The Committee does not anticipate that S. 2852 will impose any additional paperwork, time or cost upon the private sector. Section 12 of the bill provides that lenders in the Guaranteed Student Loan program and the National Direct Student Loan program will disclose, in writing to borrowers at the start of the loan repayment period, the same kinds of information currently required by the Truth-in-Lending Act, but which new disclosure would remain in effect, should that Act be waived for the purposes of these programs. The Committee also anticipates cost savings in the delivery of the student aid programs due to the institution of new procedures for approving the Family Contribution Schedule for Pell Grants.

VI. SECTION-BY-SECTION ANALYSIS

Preamble: short title

The Preamble specifies that the Act may be cited as the "Sallie Mae Technical Amendments Act of 1982."

Section 2—Student Loan Marketing Association

Section 2 extends the existing federal priority in bankruptcy waiver for Sallie Mae for another two years beyond the current September 30 expiration date.

Section 3—Maximum Pell grant

Section 3 maintains the Pell grant award ceiling at $1800 for the 1983–84 school year.

Section 4—Decoupling Pell grant family contribution schedule from campus-based programs

Section 4 mandates for an additional two years the decoupling of the campus based aid programs from the Pell grant needs analysis currently authorized by Public Law 97–161, the fiscal year 1982 Continuing Resolution.

Section 5—Pell grant family contribution schedule for academic year 1983–1984

Section 5 carries over the 1982–83 Pell grant family contribution schedule, adjusted for inflation, into 1983–84.

Section 6—Pell grant family contribution schedule for academic year 1984–1985

Section 6 provides that the 1983–84 Pell grant family contribution schedule, adjusted for inflation, shall also apply for 1984–85 unless the Department of Education by March 1 submits a new schedule which passes the review process currently established in law.

Section 7—Cost of Attendance

Section 7 carries over the academic years 1983–84 and 1984–85 the Pell grant cost-of-attendance criteria in effect for 1982–83.

Section 8—Information concerning family size offset

Section 8 provides for the updating of Pell grant needs analysis information immediately after the publication of the Consumer Price Index figure for June 1983.

Section 9—Guaranteed student loan family contribution schedule for the period July 1, 1983 through June 30, 1984

Section 9 carries over for the July 1, 1983–June 30, 1984 year the guaranteed student loan family contribution schedule for the preceding year.

Section 10—Supplemental education opportunity grant apportionment for fiscal years 1983 and 1984

Section 10 extends the current proportional reduction formula for supplemental education opportunity grant allocations to fiscal years 1983 and 1984.

Section 11—College work-study allotment for fiscal years 1983 and 1984

Section 11 extends the current proportional reduction formula for college work-study allotments to fiscal years 1983 and 1984.

Section 12—National direct student loan apportionment for fiscal years 1983 and 1984

Section 12 extends the current proportional reduction formula for national direct student loan allocations to fiscal years 1983 and 1984.

Section 13—Loan repayment disclosure

Section 13 provides for a simple, clear disclosure to borrowers of the cost and terms of their federal education loans prior to the commencement of repayment.

Section 14—Consolidation of loans by state guaranty agencies

Section 14 empowers state guaranty agencies and eligible lenders to consolidate federally insured student loans and authorizes an extended repayment period and graduated, income dependent repayment schedules.

Section 15—Linear reduction of Pell grants

Section 15 substitutes for the existing ratable reduction formula for Pell grant awards a new linearly proportional reduction whereby, under a shortage of funds, awards for those with lesser need would be cut by a larger percentage than awards for those whose need is greater. This principle is to be reflected in the schedule of reductions to be established by the Secretary of the Department of Education.

Section 16—Higher education survey data

Section 16 directs the National Center for Education Statistics to continue the collection and publication of certain data on higher education tuition and expenses for academic years 1982 through 1985.

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